CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70065 of 2021

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-1471-19-20 dated 19/02/2020 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s Vishal Pipes Ltd., ...Appellant
(A-71, Industrial Area, Sikandrabad, Bulandshahar)

VERSUS

Commissioner of CGST &

Central Excise, Noida ....Respondent

(C-56/42, Sector- 62, Noida)

<u>APPEARANCE:</u>

Ms Pratiksha Singh, Advocate for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70657/2024

DATE OF HEARING : 12 July, 2024
DATE OF DECISION : 12 July, 2024

<u>SANJIV SRIVASTAVA:</u>

This appeal is directed against Order-in-Appeal No.NOI-EXCUS-002-APP-1471-19-20 dated 19/02/2020 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida. By the impugned order Commissioner (Appeals) has held as follows:-

> *"3. The appellant relied upon several decisions of the Tribunal on a similar issue especially in the case of M/s S.K.G. Engineering Company vs Commissioner of C.Ex., Ludhiana reported in 2016 (339-ELT-261) and in their own case vide Final Order No. A/71353-71354/2019-EX[DB] dated 12.07.2019. However, I find that in these two*

decisions and also the decisions that are relied upon by the appellant in their appeal memorandum and their submission on 04.02.2020, I find that all such decisions were taken without noticing the amendment made in the law vide notification dated 26.05.2010 as mentioned above. In fact, the special provision carved out in Rule 6(6)(v) for non-reversal of the amount of 6% for exempted goods which were exported is conditional and, that has to be an export under Bond, however that possibility of export under Bond is totally ruled out by amendment inserted vide Notification No. 24/2010 dated 26.05.2010. The reason behind such restriction is that the reversal of 6% for exempted goods where separate accounts are not maintained by the manufacturer is not actually a payment of duty but reversal of an amount only to neutralize the effect of taking the Cenvat Credit on exempted goods. Therefore, this specific restriction which came into effect from 26.05.2010 was not noticed by any of the decisions of the Tribunal which was relied upon by the appellant in this appeal and, therefore, such decision cannot have a binding effect on this specific issue, on account of the bar imposed by the amendment in the rules.

4. I therefore, find that the Order-in-Original is legal and proper and the appeal of the appellant is liable to be rejected.

5. I therefore, uphold the impugned Order-in-Original No.01/2019- 20/AC/DIV-BSR dated 31.05.2019 and dismiss the appeal bearing No. No.426/CE/NOIDA/APPL/GBN/2019-20."

2.1 Appellant is engaged in the manufacture of exempted as well as dutiable goods and was availing the benefit of Cenvat Credit Scheme. However, he was not maintaining separate account in respect of the goods and services against which

Cenvat credit taken as required under Rule 6(2) of Cenvat Credit Rules. They were required to pay an amount equalant to 6% of the value of exempted goods when exported out of India.

2.2 Show cause notice dated 06.07.2016 for the period April, 2012 to December, 2014 was issued to the appellant. Subsequently, an statement of demand dated 21.01.2017 for the period January, 2015 to December, 2016 was issued to the appellant. This statement of demand and show cause notice was confirmed vide order dated 28.02.2017 and 31.03.2017.

2.3 The present issue in respect of another statement of demand dated 11.12.2018 issued for the period January, 2017 to June, 2017.

2.4 Original Authority has confirmed the demand made as per the above said statement of demand. Aggrieved appellant have filed appeal before Commissioner (Appeals) who has upheld the order of Original Authority vide the impugned order referred in para-1 above. Aggrieved appellant have filed this appeal before Tribunal.

3.1 I have heard Ms Pratiksha Singh learned Counsel appearing for the appellant and Shri Santosh Kumar learned Authorized Representative appearing for the revenue.

3.2 Arguing for the appellant learned Counsel submits that the earlier show cause notice and demand has been made was reached before Tribunal and the Tribunal vide Final Order No.71353-71354/2019 dated 12.07.2019 has decided the issue in favour of the appellants. Since the issue involved in the present case also is exactly identical and the same may be applicable in the present case in respect of this statement of demand also.

3.3 Learned Authorized Representative reiterates the findings recorded in the orders of the lower authorities.

4.1 I have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 Statement of Demand dated 11.12.2018 specifically records a table on page no.2, the same is reproduced as under:-

Details of Previously issued show cause Notice (s)

<table>
<tr><th>Sl. No.</th><th colspan="2">SCN/SOD issued vide C. No.</th><th>Date</th><th>Period Involved</th><th colspan="2">Duty amount (in Rs.)</th></tr>
<tr><td>01</td><td colspan="2">Notice to Show Cause Sl. No. 18/ADC/ Audit-11/2016-17 dtd. 05.07.2016 issued vide C. No. V(1)Audi/M-11/Deam./ Vishal Pipes/36/15/768.</td><td>06.07.2016</td><td>April, 2012 to Dec, 2014</td><td colspan="2">20,57,311/-</td></tr>
<tr><td>02.</td><td colspan="2">V(15)Adj/SCN/Vishal/D-V/N-11/23/16-17/148-149</td><td>20.01.2017</td><td>Jan. 15 to Dec. 16</td><td colspan="2">12,48,047/-</td></tr>
<tr><td colspan="2">Issue in brief</td><td colspan="5">The party is manufacturing hand pumps falling under Chapter Heading 8413, exempted from the whole of duty vide Notification 12/2012 CE dated 17.03.2012 (mentioned at Sl. No. 236 of Notification). The party availed and utilized CENVAT credit on common inputs used in manufacturing of both dutiable as well as exempted goods (i.e. hand pumps and parts thereof). The party is not maintaining separate accounts of receipt and consumption of Inputs/Input Services as required under Rule 6(2) of Cenvat Credit Rules, 2004. They are paying an amount equal to 6% of value of the exempted goods i.e. Hand Pumps Cleared for home consumption but did not pay an amount equal to 6% of value of the exempted goods when exported as required under sub rule 3(i) of Rule 6 of Cenvat Credit Rules, 2004.</td></tr>
<tr><td colspan="7">In terms of Section 11A(7A) of the Central Excise Act, 1944, the facts and allegations made in the previous notices on the above issue only, shall form the part of this Statement of Demand.</td></tr>
<tr><td colspan="2">Contravention</td><td colspan="5">Rule 6 of Cenvat Credit Rules, 2004,</td></tr>
<tr><td colspan="2" rowspan="2">Central Excise duty Demanded</td><td colspan="2">Period Covered in this SOD</td><td colspan="2">Central Excise duty Payable</td><td>Remarks</td></tr>
<tr><td colspan="2">Jan. 17 to June 17</td><td colspan="2">11,24,366/-</td><td>Details furnished in Annex. "A"</td></tr>
</table>

4.3 These two matters have been finally decided in favour of the appellant by this Tribunal. Tribunal vide Final Order No.71353-71354/2019 dated 12.07.2019 held as follows:-

> *"4. The appellant, in their Written Submission have relied upon the Tribunal's decision in the case of S.K.G. Engineering Company v. Commissioner of C.Ex., Ludhiana [2016 (339) E.L.T. 261 (Tri.-Chan.)], wherein an identical question was considered and it was held as under:-*
>
> > *"4. In this case, the exempted goods have been exported by the appellant and no drawback claimed has been filed by the appellant, moreover, no refund claim of unutilized credit was also filed. In that*

circumstance, when the exempted goods are exempted, although the appellant has followed the provision of Rule 6 of Cenvat Credit Rules, 2004 then they cannot be asked to pay 5% of the value of the goods which are exported. In the circumstances, I set aside the impugned order qua demanding duty as the duty is not payable by the appellant, therefore, the question of imposing penalty does not arise."

4.4 Accordingly, by following the above referred precedent decision of Tribunal in respect of the earlier show cause notices/ statement of demands issued to the appellant on the same ground, I do not find any merits in the impugned order.

5.1 Appeal is allowed.

(Operative part of order pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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